

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Amanda Harouche	Team: Squad #16	CCRB Case #: 201409359	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 08/23/2014 5:30 AM	Location of Incident: Corner of West 189th Street and Saint Nicholas Avenue and the 34th Precinct Stationhouse	Precinct: 34	18 Mo. SOL 2/23/2016	EO SOL 2/23/2016	
Date/Time CV Reported Thu, 09/11/2014 11:59 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 09/11/2014 11:59 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Daniel Cross	02635	944473	BX CT
2. SGT Matthew Bourbeau	01596	929762	034 PCT
3. POM Johnny Diaz	31661	915603	034 PCT
4. POM Vito Guagenti	00424	949067	034 PCT
5. An officer			034 PCT
6. LT Warren Tom	00000	923260	034 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Johnny Diaz	Abuse: At the corner of West 189th Street and Saint Nicholas Avenue in Manhattan, PO Johnny Diaz stopped the car in which § 87(2)(b) was an occupant.	
B.SGT Matthew Bourbeau	Abuse: At the corner of West 189th Street and Saint Nicholas Avenue in Manhattan, Sgt. Matthew Bourbeau stopped the car in which § 87(2)(b) was an occupant.	
C.POM Johnny Diaz	Abuse: At the corner of West 189th Street and Saint Nicholas Avenue in Manhattan, PO Johnny Diaz questioned § 87(2)(b)	
D.POM Johnny Diaz	Abuse: At the corner of West 189th Street and Saint Nicholas Avenue in Manhattan, PO Johnny Diaz refused to provide his name and shield number to § 87(2)(b)	
E.POM Johnny Diaz	Discourtesy: At the corner of West 189th Street and Saint Nicholas Avenue in Manhattan, PO Johnny Diaz spoke discourteously to § 87(2)(b)	
F.SGT Matthew Bourbeau	Abuse: At the corner of West 189th Street and Saint Nicholas Avenue in Manhattan, Sgt. Matthew Bourbeau questioned § 87(2)(b)	
G.SGT Matthew Bourbeau	Discourtesy: At the corner of West 189th Street and Saint Nicholas Avenue in Manhattan, Sgt. Matthew Bourbeau spoke discourteously to § 87(2)(b)	
H.SGT Matthew Bourbeau	Abuse: At the corner of West 189th Street and Saint Nicholas Avenue in Manhattan, Sgt. Matthew Bourbeau searched the car in which § 87(2)(b) was an occupant.	

Officer(s)	Allegation	Investigator Recommendation
I.SGT Matthew Bourbeau	Abuse: At the corner of West 189th Street and Saint Nicholas Avenue in Manhattan, Sgt. Matthew Bourbeau threatened to arrest § 87(2)(b)	
J.SGT Matthew Bourbeau	Abuse: At the corner of West 189th Street and Saint Nicholas Avenue in Manhattan, Sgt. Matthew Bourbeau refused to provide his name and shield number to § 87(2)(b)	
K.POM Johnny Diaz	Abuse: At the corner of West 189th Street and Saint Nicholas Avenue in Manhattan, PO Johnny Diaz searched the car in which § 87(2)(b) was an occupant.	
L.POM Daniel Cross	Abuse: At the corner of West 189th Street and Saint Nicholas Avenue in Manhattan, PO Daniel Cross questioned § 87(2)(b)	
M. An officer	Abuse: At the corner of West 189th Street and Saint Nicholas Avenue in Manhattan, an officer damaged § 87(2)(b)'s property.	
N.POM Vito Guagenti	Abuse: At the corner of West 189th Street and Saint Nicholas Avenue in Manhattan, PO Vito Guagenti searched the car in which § 87(2)(b) was an occupant.	
O.POM Daniel Cross	Abuse: At the corner of West 189th Street and Saint Nicholas Avenue in Manhattan, PO Daniel Cross searched the car in which § 87(2)(b) was an occupant.	
P.LT Warren Tom	Abuse: At the 34th Precinct Stationhouse, Lt. Warren Tom did not process § 87(2)(b)'s complaint regarding officers.	
§ 87(4-b), § 87(2)(g)		

### Case Summary

On August 23, 2014, around 5:30 a.m., at the intersection of West 189<sup>th</sup> Street and Saint Nicholas Avenue in Manhattan, § 87(2)(b)'s car was stopped by PO Johnny Diaz and Sgt. Matthew Bourbeau of the 34<sup>th</sup> Precinct (**Allegations A and B**). § 87(2)(b)'s cousin, whose real name is unknown to the investigation, was in the front seat at the time. PO Daniel Cross and PO Vito Guagenti, of the 34<sup>th</sup> Precinct, pulled up to the car stop as well. During the car stop, PO Diaz asked § 87(2)(b) to step out of his car. PO Diaz allegedly asked § 87(2)(b) about his past arrests (**Allegation C**), refused to provide his name and shield to § 87(2)(b) (**Allegation D**) and called § 87(2)(b) a dick (**Allegation E**). Sgt. Bourbeau asked § 87(2)(b) if he had anything in his car that he was not supposed to have (**Allegation F**) and allegedly called § 87(2)(b) a dick (**Allegation G**). Sgt. Bourbeau then searched § 87(2)(b)'s car (**Allegation H**). Sgt. Bourbeau then allegedly said, "Are you sure you're not fucking lying to me?" (**within Allegation G**). Sgt. Bourbeau then allegedly threatened to arrest § 87(2)(b) (**Allegation I**) and said that he would lock § 87(2)(b)'s ass up and called § 87(2)(b) a dick within these threats of arrests (**within Allegation G**). Sgt. Bourbeau then allegedly refused to provide his name and shield number to § 87(2)(b) (**Allegation J**). PO Diaz then searched § 87(2)(b)'s car (**Allegation K**). PO Cross, who was standing with § 87(2)(b), asked him about his past arrests (**Allegation L**). During the search an officer allegedly cut wires that were in § 87(2)(b)'s car which caused his headlights to no longer work (**Allegation M**). § 87(2)(b) and the passenger were then told to return to the car and all four officers looked in § 87(2)(b)'s trunk (**Allegations N and O and within Allegations H and K**). § 87(2)(b) was told he could leave and drove away. § 87(2)(b) drove back to the officers after driving for about five minutes. § 87(2)(b) approached PO Diaz who was seated in his police car and asked him for his shield number. PO Diaz mumbled his own shield number and gave § 87(2)(b) the shield numbers of his partners; the number that PO Diaz mumbled did not match the number that § 87(2)(b) observed on his name plate (**within Allegation D**). Sgt. Bourbeau then allegedly called § 87(2)(b) a dick (**within Allegation G**). After this interaction, § 87(2)(b) went to the 34<sup>th</sup> Precinct stationhouse where he asked Lt. Warren Tom, of the 34<sup>th</sup> Precinct, for a CCRB form and Lt. Tom allegedly told him that the forms no longer existed because it was 2014 and that he needed to file his complaint with the CCRB (**Allegation P**).

§ 87(2)(b) was issued three summonses, all of which were written by PO Cross, as a result of this incident. One summons for a defective right turn signal and one summons for a defective left turn signal were issued at 5:30 a.m. and one summons for an expired inspection sticker was issued at 5:40 a.m. (encl. 6e-g).

### Mediation, Notice of Claim, and Criminal Histories

This case was not eligible for mediation § 87(2)(g). As of April 3, 2015, no Notice of Claim has been filed in regards to this incident (encl. 17a). § 87(2)(b)

§ 87(2)(b)

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§ 87(2)(b)

[illegible]

- PO Guagenti has been a member of the service for four years and there are no substantiated CCRB allegations against him. § 87(2)(g)
- Lt. Tom has been a member of the service for 16 years and there are no substantiated CCRB allegations against him. § 87(2)(g)

## **Findings and Recommendations**

### **Explanation of Subject Officer Identification**

- The investigation determined that PO Diaz and Sgt. Bourbeau were in the car that initially stopped § 87(2)(b) § 87(2)(g)
- § 87(2)(b) alleged that the first officer who approached the driver's side of the car asked him if he had ever been arrested, refused to provide his name and shield number to him, and used a discourtesy towards him. Additionally, § 87(2)(b) alleged that he interacted with the same officer when he drove back to the scene and that this officer was sitting in his car when § 87(2)(b) asked him for his badge number and the rest of the officers' badge numbers. § 87(2)(g)
- § 87(2)(b) alleged that the officer wearing a gold shield asked him if he had anything in his car that he was not supposed to have, made certain discourteous statements against him, threatened to arrest him, and refused to provide his name and shield number to him. § 87(2)(g)
- § 87(2)(b) alleged that when standing at the back of the car an officer asked him if he had ever been arrested; PO Cross was standing at the back of the car with § 87(2)(b) and admitted to asking § 87(2)(b) this question. § 87(2)(g)
- § 87(2)(b) alleged that two officers entered the car and that all four officers looked in the trunk of his car. § 87(2)(g)
- § 87(2)(b) did not see the officer that allegedly cut the wires in his car and no officer admitted to doing so. § 87(2)(b) did not provide the CCRB with proof of this damage. § 87(2)(g)
- § 87(2)(b) stated that when he went to the 34<sup>th</sup> Precinct stationhouse to file a complaint, he spoke to an officer wearing a uniformed white shirt. The Tour 1 Roll Call shows that Lt. Tom is the only officer who would have been wearing a uniformed white shirt at the time of this incident. § 87(2)(g)

## Investigation Findings and Recommendations

**Allegation A – Abuse of Authority: At the corner of West 189<sup>th</sup> Street and Saint Nicholas Avenue in Manhattan, PO Johnny Diaz stopped the car in which § 87(2)(b) was an occupant.**

**Allegation B – Abuse of Authority: At the corner of West 189<sup>th</sup> Street and Saint Nicholas Avenue in Manhattan, Sgt. Matthew Bourbeau stopped the car in which § 87(2)(b) was an occupant.**

It is undisputed that § 87(2)(b)'s car was stopped and that he received two summonses for a right and left defective turn signal.

PO Diaz and PO Cross (the only officers that remembered the incident) both stated that they observed § 87(2)(b)'s car's cracked taillights while driving past § 87(2)(b)'s car. PO Diaz stated that § 87(2)(b)'s car was stopped for the cracked turn signal lights, dark tinted windows (which § 87(2)(b) admitted to having) and for the possibility of § 87(2)(b)'s car being involved in a pattern of police impersonation incidents in the precinct since it looked like an old police car. PO Cross and PO Guagenti also corroborated the fact that there was a pattern of police impersonations in the precinct and PO Cross corroborated the fact that § 87(2)(b)'s car looked like an old unmarked police car with spotlights on the side of it (encl. 5a-g; 6a-l; 7a-f).

Although § 87(2)(b) states he received these summonses when he returned to the police officers five to ten minutes after being told he could leave because the officers did something to his car to make his headlights not work, both PO Diaz and PO Cross stated that § 87(2)(b) was released with two summonses for defective turn signals the first time the officers interacted with him. PO Cross stated that when § 87(2)(b) came back to the officers, around five to ten minutes later, PO Cross observed that § 87(2)(b) also had an expired inspection sticker and issued him a summons for that. This is corroborated by the times that are listed on the summonses issued to § 87(2)(b). The two defective turn signal summonses were issued at 5:30 a.m. and the inspection sticker summons was issued at 5:40 a.m. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

According to People v. Melendez, 2 Misc. 3d 1002 (Sup. Ct. New York Cty. 2004) an officer may stop a car upon reasonable suspicion that the driver has committed a violation of the Vehicle and Traffic Law (encl. a-j). If officers have probable cause to stop a person for a traffic violation, that stop is lawful, regardless of whether the officers' true motives for the stop was to investigate something else New York v. Robinson, 2014 NY App. Div. LEXIS 7787 (encl. k-l).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation C – Abuse of Authority: At the corner of West 189<sup>th</sup> Street and Saint Nicholas Avenue in Manhattan, PO Johnny Diaz questioned § 87(2)(b)**

**Allegation E – Abuse of Authority: At the corner of West 189<sup>th</sup> Street and Saint Nicholas Avenue in Manhattan, PO Johnny Diaz spoke discourteously to § 87(2)(b)**

§ 87(2)(b) stated that when he was told to step out of the car and brought to stand by the bumper of his car by PO Diaz, PO Diaz asked him if he had ever been arrested as well as more detailed questions about his arrests such as where the crime happened, how the crime happened, and how much time he served. In response, § 87(2)(b) asked PO Diaz for his shield number and PO Diaz responded by saying, “Oh you want to be a dick?” § 87(2)(b) did not make either of these allegations in his phone statement (encl. 2a-d; 3a-h).

PO Diaz denied asking § 87(2)(b) about his past arrests. PO Diaz also denied that he responded by saying, “Oh you want to be a dick?” when he was asked for his badge number. PO Diaz denied calling § 87(2)(b) a dick or using any discourtesies with § 87(2)(b) and did not hear any other officer call § 87(2)(b) a dick or use any discourtesies with him (encl. 5a-g).

PO Cross admitted to asking § 87(2)(b) about his past arrests but did not hear another officer ask § 87(2)(b) about his past arrests. PO Cross did not hear any officer call § 87(2)(b) a dick or use any discourtesies with § 87(2)(b) (encl. 6a-l). Sgt. Bourbeau and PO Guagenti did not recall the incident (encl. 4a-g; 7a-f).

§ 87(2)(g)

**Allegation D – Abuse of Authority: At the corner of West 189<sup>th</sup> Street and Saint Nicholas Avenue in Manhattan, PO Johnny Diaz refused to provide his name and shield number to § 87(2)(b)**

**Allegation J – Abuse of Authority: At the corner of West 189<sup>th</sup> Street and Saint Nicholas Avenue in Manhattan, Sgt. Matthew Bourbeau refused to provide his name and shield number to § 87(2)(b)**

§ 87(2)(g)

In his formal statement, § 87(2)(b) stated that when PO Diaz asked about his past arrests, he asked PO Diaz for his shield number and PO Diaz responded by saying, “Oh you want to be a dick?” and did not provide his shield number. § 87(2)(b) did not allege this in his phone statement. In his phone statement he also alleged that after Sgt. Bourbeau said he would lock his “ass up,” he asked Sgt. Bourbeau for his name and shield number more than three times and that Sgt. Bourbeau refused to give his shield number to him. § 87(2)(b) did not allege that he asked Sgt. Bourbeau for his name and shield number during his interview at the CCRB.

During his formal statement, § 87(2)(b) said that when he went back to the officers after being released, he approached PO Diaz, who was sitting in the police car and began to write down his shield number. § 87(2)(b) said that PO Diaz mumbled his shield number to him but the numbers that he mumbled were not the numbers that § 87(2)(b) read on his shield. § 87(2)(b)

§ 87(2)(b) asked PO Diaz for his partner's shield numbers and PO Diaz provided three additional shield numbers but did not tell § 87(2)(b) which number corresponded with which officer. (In his phone statement, § 87(2)(b) was inconsistent in saying both that each officer provided their own shield numbers and also that PO Diaz provided all of the officer's shield numbers.) § 87(2)(b) received a total of four badge numbers that he provided to the CCRB – 21904, 1596, 2635 and 6975; 1596 and 2635 correspond to Sgt. Bourbeau and PO Cross respectively, the other two badge numbers do not correspond with any of the other officers involved in this incident or officers who were assigned to the 34<sup>th</sup> Precinct. The other two numbers are also not at all similar to PO Guagenti and PO Diaz's badge numbers which are 00424 and 31661 respectively (encl. 2a-d; 3a-h).

PO Diaz stated that the first time § 87(2)(b) asked for his name and badge number was when § 87(2)(b) came back to the scene five to ten minutes after being let go and approached PO Diaz, who was sitting in his police car, and said, "I want your name and shield number." PO Diaz stated that he gave § 87(2)(b) his name and shield number when he requested it. After he obtained PO Diaz's name and shield number, § 87(2)(b) walked around the car, approached Sgt. Bourbeau's side of the car, and asked him for his name and shield number which Sgt. Bourbeau provided to him (encl. 5a-g).

Sgt. Bourbeau did not remember § 87(2)(b) asking himself or any other officer for their badge number and he was not aware of any other officer using discourtesies with § 87(2)(b) Sgt. Bourbeau did not recall hearing another officer call § 87(2)(b) a dick and he did not call § 87(2)(b) a dick himself (encl. 4a-g).

PO Cross stated that he did not hear if § 87(2)(b) asked PO Diaz, PO Guagenti and Sgt. Bourbeau for their shield numbers because he was not paying attention but stated that at one point during his interaction with § 87(2)(b) though he could not remember which point, § 87(2)(b) asked PO Cross for his shield number and PO Cross provided it to § 87(2)(b) the first time he asked for it (encl. 6a-l).

PO Guagenti did not recall this incident and he did not remember § 87(2)(b) asking any officer for their shield numbers and he did not remember any officer calling § 87(2)(b) a dick (encl. 7a-f).

§ 87(2)(g)

[REDACTED]



§ 87(2)(g)

**Allegation F – Abuse of Authority: At the corner of West 189<sup>th</sup> Street and Saint Nicholas Avenue in Manhattan, Sgt. Matthew Bourbeau questioned § 87(2)(b)**

**Allegation H – Abuse of Authority: At the corner of West 189<sup>th</sup> Street and Saint Nicholas Avenue in Manhattan, Sgt. Matthew Bourbeau searched the car in which § 87(2)(b) was an occupant.**

**Allegation K – Abuse of Authority: At the corner of West 189<sup>th</sup> Street and Saint Nicholas Avenue in Manhattan, PO Johnny Diaz searched the car in which § 87(2)(b) was an occupant.**

**Allegation N – Abuse of Authority: At the corner of West 189<sup>th</sup> Street and Saint Nicholas Avenue in Manhattan, PO Vito Guagenti searched the car in which § 87(2)(b) was an occupant.**

**Allegation O – Abuse of Authority: At the corner of West 189<sup>th</sup> Street and Saint Nicholas Avenue in Manhattan, PO Daniel Cross searched the car in which § 87(2)(b) was an occupant.**

It is undisputed that § 87(2)(b)'s car was searched.

§ 87(2)(b) alleged that he was asked to step out of the car and that Sgt. Bourbeau asked him if there was anything in his car that he should know about before he started searching the car. He also stated that PO Diaz entered his car as well. In both of his statements, he stated that Sgt. Bourbeau approached him and asked him if dry leaves that he found were marijuana. § 87(2)(g)

§ 87(2)(g) In his phone statement, § 87(2)(b) stated that Sgt. Bourbeau asked him if the dry leaves on the exterior of his car were marijuana however in his verified interview, § 87(2)(b) stated that Sgt. Bourbeau asked him if the dry leaves in the back of his car were marijuana. In both statements, § 87(2)(b) told Sgt. Bourbeau that the leaves were not marijuana but that they were from the tree he parks his car underneath.

§ 87(2)(g) In his phone statement, § 87(2)(b) stated that there were only three officers on the scene and that all three officers searched the inside of § 87(2)(b)'s car while § 87(2)(b) and his passenger stood at the back of the car alone. In his phone statement, he did not allege that the officers searched his trunk. During his formal interview, he stated that Sgt. Bourbeau searched his car first and that later on PO Diaz entered the front seat of his car to try to open his hood. He then stated that when he was told to go back into his car, all four officers looked in his trunk (encl. 2a-d; 3a-h).

Both PO Diaz and PO Cross stated that PO Diaz and Sgt. Bourbeau searched the inside of § 87(2)(b)'s car while PO Cross and PO Guagenti stayed at the back of the car with § 87(2)(b) and the passenger.

PO Diaz stated that when he asked § 87(2)(b) for his license and registration, he smelled the moderate smell of previously burned marijuana in the car. He also observed flakes of marijuana on the floor near the back passenger's seat. PO Diaz recognized the smell and substance that he observed to be marijuana due to his nearly twenty years of experience on the job. Once PO Diaz smelled marijuana he suspected that § 87(2)(b) had been smoking marijuana in the car earlier and that they might have more marijuana in the car. PO Diaz asked § 87(2)(b) if he had any

more marijuana in the car or if he had any weapons and § 87(2)(b) denied that he had anything in the car. PO Diaz decided that § 87(2)(b) should be taken out of the car and asked § 87(2)(b) to step out of the car so that PO Diaz could conduct an investigation to see if he had any more marijuana or weapons in his car. The passenger of the car was asked to step out of the car by Sgt. Bourbeau seconds after § 87(2)(b) was asked to step out of the car. PO Diaz thought that he communicated that he smelled and observed marijuana to Sgt. Bourbeau when the car occupants exited the car and were brought to the back of the car to be watched by PO Cross and PO Guagenti,. PO Diaz believed that one of the officers might have asked § 87(2)(b) why he had marijuana leaves on the floor of his car but he did not remember which officer asked this. § 87(2)(b) was not summonsed for the marijuana PO Diaz observed on the floor of his car because the marijuana was in flakes and spread out and the officers decided that it was not enough of a quantity to gather, voucher, and write a summons for, especially since they are anti-crime and marijuana is not their main focus (encl. 5a-g).

PO Cross stated that he heard an officer, whom he did not recall, tell § 87(2)(b) that he smelled and observed marijuana in the car and he believed this was the reason § 87(2)(b) and the passenger were asked to exit the car. PO Cross did not smell or observe the marijuana himself because he stayed at the back of the car for the entire car stop. PO Cross stated that he did not searched the car but that he remembered seeing wires in the trunk of the car, which supports § 87(2)(b)'s statement that all of the officers looked into § 87(2)(b)'s trunk (encl. 6a-l).

Sgt. Bourbeau and PO Guagenti did not remember the incident and did not remember § 87(2)(b)'s car being searched or any reason why it could have been searched (encl. 4a-g; 7a-f).

If a car is lawfully stopped and an officer smells the odor of marijuana, the officer has probable cause to search the car and its occupants People v. Smith, 66 A.D.3d 514 (1<sup>st</sup> Dept, 2009) (encl. m-n). The discovery of marijuana in a motor car justifies a full scale search for additional contraband. People v. Coggins 175 A.D.2d 924 (encl.n)

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED]

**Allegation G – Discourtesy: At the corner of West 189<sup>th</sup> Street and Saint Nicholas Avenue in Manhattan, Sgt. Matthew Bourbeau spoke discourteously to § 87(2)(b)**

**Allegation I – Abuse of Authority: At the corner of West 189<sup>th</sup> Street and Saint Nicholas Avenue in Manhattan, Sgt. Matthew Bourbeau threatened to arrest § 87(2)(b)**

§ 87(2)(b) stated that when he told Sgt. Bourbeau that there was nothing in the car and that he did not consent to his car being searched, Sgt. Bourbeau responded by saying, “You know what this guy is being a dick.” (In his phone statement, § 87(2)(b) did not allege this.) In his phone statement, § 87(2)(b) stated that when he denied that the leaves Sgt. Bourbeau were asking him about were marijuana, Sgt. Bourbeau said, “Are you sure you’re not fucking lying to me?” (which he did not re-allege in his formal interview) and that Sgt. Bourbeau told § 87(2)(b) he would lock his “ass up”. In his verified interview, § 87(2)(b) first stated that Sgt. Bourbeau said he was going to call a rookie officer to the scene to lock his “ass up for lying to [him] and being a dick,” then stated that Sgt. Bourbeau said, “Really you want to be a dick? You know what I’m going to call a rookie to come over here so he could lock your ass up for being a dick.” And that Sgt. Bourbeau then told § 87(2)(b) he was going to put him through the system for being a dick.

§ 87(2)(b) also stated that when he went back to the officers after being let go the first time, Sgt. Bourbeau said to the other officers, “This guy is going to be a dick. We are going to give him tickets.” § 87(2)(b) alleged that the officers then took his identification for a second time and began writing him the summonses he received as a result of this incident; two summonses for defective turn signals and one summons for an expired inspection sticker (encl. 2a-d; 3a-h).

Sgt. Bourbeau did not remember any of his interaction with § 87(2)(b) and he did not remember the content of any conversations he may have had with § 87(2)(b). Sgt. Bourbeau did not recall making any of the discourtesies or threats of arrest that were alleged by § 87(2)(b) (encl. 4a-g). PO Diaz, PO Cross and PO Guagenti all denied hearing an officer call § 87(2)(b) a dick or use any discourtesies with § 87(2)(b) and that they did not hear an officer say any of the above mentioned statements pertaining to arresting § 87(2)(b) (encl. 5a-g; 6a-l; 7a-f).

§ 87(2)(g)  
Additionally, one of the statements § 87(2)(b) alleged is that Sgt. Bourbeau called him a “dick” and said they were going to issue him summonses the second time § 87(2)(b) approached the officers; however, the investigation determined that § 87(2)(b) was issued summonses that required his identification (the two defective turn signal summonses) at the end of his first interaction with the officers. PO Cross issued § 87(2)(b) the third summons, for an expired inspection sticker, when § 87(2)(b) interacted with the officers the second time. He did not need § 87(2)(b)’s license to write this summons and stated that he placed this summons on § 87(2)(b)’s windshield; PO Diaz, the only other officer who fully recalled this incident, was not aware of the inspection summons that PO Cross wrote which corroborates PO Cross’s statement § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

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§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation L – Abuse of Authority: At the corner of West 189<sup>th</sup> Street and Saint Nicholas Avenue in Manhattan, PO Daniel Cross questioned § 87(2)(b)**

§ 87(2)(b) stated that when he stood at the back of his car with PO Cross and PO Guagenti, PO Cross asked § 87(2)(b) information about his prior arrests (encl. 2a-d; 3a-h).

PO Cross stated when he stood with § 87(2)(b) at the back of the car he asked § 87(2)(b) basic inquiry questions, if he had ever been arrested and how much time he had served. PO Cross did not know if any other officer asked § 87(2)(b) these questions as well. PO Cross explains that he usually asks people that he stops if they had ever been arrested. He asks people about prior arrests because sometimes people are more forthcoming if they have been in trouble before and they will be more forthcoming about any contraband they may have on them or in their car in order to try to avoid being arrested again. He asks these questions as part of a comforting tactic to try to get civilians to feel more comfortable with him (encl. 6a-l).

An officer requires founded suspicion that criminality is afoot in order to ask a common-law right of inquiry People v. DeBour 40 N.Y.2d 210 (encl. o-y). The odor of marijuana coming from a person's vehicle provides the officer with a founded suspicion to believe that the person was engaged in criminal activity, which permits the officer to engage in more intrusive and pointed questioning under the common law right of inquiry People v. Bazzey 841 N.Y.S.2d 220 (encl. cc-ee).

§ 87(2)(g)  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**Allegation M – Abuse of Authority: At the corner of West 189<sup>th</sup> Street and Saint Nicholas Avenue in Manhattan, An officer damaged § 87(2)(b)'s property.**

In his phone statement, § 87(2)(b) alleged that he noticed that his headlights had stopped working and that he realized this was because wires that were exposed on his dashboard were cut by the officers when they were searching the car. § 87(2)(b) did not see the officers do this. § 87(2)(b) did not re-allege this property damage in his formal interview. In a follow up statement, § 87(2)(b) stated that these wires had been attached to the headlights and his directional lights which is why his directional lights did not work even though everything had been working prior to § 87(2)(b) being pulled over (encl. 2a-d; 3a-h).

PO Cross remembered there being a lot of wires in the trunk of § 87(2)(b)'s car but stated that none of the officers cut those wires or any other wires in the car (encl. 6a-l). None of the officers admitted to cutting wires that were in the car (encl. 4a-g; 5a-g; 7a-f).

§ 87(2)(b) did not provide the CCRB with any evidence of the damaged wires. He alluded to the fact that he was given the summonses for defective turn signals when he went back to the officers the second time due to the fact that the officers had cut the wires that were attached the headlights and directional lights of the car, which caused them not to work. However, PO Diaz and PO Cross both stated that § 87(2)(b)'s turn signal lights were cracked when they first observed § 87(2)(b)'s vehicle and that this was the reason they pulled § 87(2)(b)'s vehicle over. They also both stated that § 87(2)(b) was issued the summonses for these defective turn

signals when § 87(2)(b) was released after his first interaction with the officers; this is corroborated by the fact that the time on the defective turn signal summonses is ten minutes prior to the time on § 87(2)(b)'s expired inspection sticker summons, which PO Cross stated he noticed on § 87(2)(b)'s car when he left it double parked and approached the officers the second time.

§ 87(2)(g)

**Allegation P – Abuse of Authority: At the 34<sup>th</sup> Precinct stationhouse, Lt. Warren Tom did not process § 87(2)(b)'s complaint regarding officers.**

§ 87(2)(b) stated that he went to the 34<sup>th</sup> Precinct stationhouse around 6:00-6:10 a.m. on August 23, 2014 and asked an officer wearing a uniform white shirt, identified by the investigation as Lt. Tom, for the CCRB complaint form. Lt. Tom told § 87(2)(b) that the CCRB form no longer existed because it was 2014 and that he had to file the complaint through the CCRB. Lt. Tom then told § 87(2)(b) that he needed to leave the stationhouse. Sgt. Bourbeau, PO Diaz, PO Cross and PO Guagenti arrived at the stationhouse when § 87(2)(b) was there (encl. 2a-d; 3a-h).

Lt. Tom did not recall having any interactions with § 87(2)(b) and was not sure if he was at the stationhouse around 6:00 a.m. on the date of this incident. Although § 87(2)(b) did not look familiar to Lt. Tom, Lt. Tom did not recall interacting with § 87(2)(b) at the stationhouse, he did not tell § 87(2)(b) that the CCRB complaint form did not exist anymore because it was 2014, and did not tell § 87(2)(b) that he needed to file his complaint with the CCRB or that he needed to leave the stationhouse; Lt. Tom did not hear another officer tell § 87(2)(b) these things (encl. 8a-c).

PO Diaz is the only officer that remembered § 87(2)(b) being at the stationhouse when he returned to the stationhouse at the end of his tour. PO Diaz stated that § 87(2)(b) was just standing at the stationhouse and that he did not hear § 87(2)(b) asking to file a complaint (encl. 5a-g).

§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

Pod: \_\_\_\_\_

Investigator: _____	_____	_____
Signature	Print	Date

Supervisor: _____	_____	_____
Title/Signature	Print	Date

Reviewer: _____	_____	_____
Title/Signature	Print	Date

Reviewer: _____	_____	_____
Title/Signature	Print	Date